



## STATE OF WISCONSIN

In the Matter of



DECISION

FOO 164053

The attached proposed decision of the Administrative Law Judge dated April 17, 2015, is hereby adopted as the final order of the Department.

### REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST". Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 15<sup>th</sup> day of July,  
20\_\_

A handwritten signature in black ink, appearing to read "Thomas J. Engels".  
\_\_\_\_\_  
Thomas J. Engels, Deputy Secretary  
Department of Health Services



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

In the Matter of



PROPOSED DECISION

FOO/164053

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 17, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on March 17, 2015, at West Bend, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's FS benefits effective December 1, 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Ken Benedum

Washington County Department of Social Services  
333 E. Washington Street  
Suite 3100  
West Bend, WI 53095

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. On November 24, 2014, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would decrease to \$16/month effective December 1, 2014.

3. Petitioner has Social Security income of \$816.78/month. His rent is \$222/month which includes heat and other utilities.
4. Petitioner pays his landlord \$4/month for "excess utilities." This is to cover the cost of using an electric space heater which the Petitioner purchased for himself.
5. On February 17, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

In determining the amount of FS to be issued each month, the agency must budget all of the recipient's nonexempt income, including earned and unearned income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$155 per month for a one-person household. 7 C.F.R. §273.9(d)(1); FoodShare Handbook (FSH), § 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FSH, § 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FSH, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FSH, § 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(6); FSH, § 4.6.7.

On April 28, 2014, a change was made to the standard utility allowance/deduction available to households receiving FS benefits. See DHS Operations Memo 14-16. Households that have received a payment from the Wisconsin Housing Energy Assistance Program (WHEAP) in the previous 12 months or pay a utility cost for heating separate from rental expense receive the full Heating Standard Utility Allowance (HSUA) of \$490/month. Households that pay two or more non-heat qualifying utility expenses (phone, water, sewer, electric, cooking fuel, or trash) receive a Limited Utility Allowance (LUA) of \$321/month. Households that pay only a non-heat electric bill receive an Electric Utility Allowance (EUA) of \$161/month. Households that pay only water, sewer, septic tank installation/maintenance or wastewater treatment bills receive a Water and Sewer Utility Allowance (WUA) of \$74/month. Households that pay only a cooking fuel expense receive a Fuel Utility Allowance (FUA) of \$37/month. Households that pay only a telephone expense, including cell phones, receive a Phone Utility Allowance (PUA) of \$30/month. Households that pay only a trash or garbage bill receive a Garbage and Trash Utility Allowance (TUA) of \$19/month.

The Petitioner asserts that he should be given a deduction because he pays a separate utility expense of \$4/month for the space heater. He cites the FS Wisconsin Standard Utility brochure which indicates that a FS group is allowed the HSUA if it receives a WHEAP payment or is "required to pay a separate utility cost (that is not included in your rent) for heating your home such as electricity . . ." The Petitioner contends that his landlord controls the heat in his apartment and he requires additional heat from what is provided due to a medical condition.

The Wisconsin FS handbook states that "countable utility expenses" are deductible as shelter/utility expense. The agency is not to count surcharges such as pet expenses, extra garage rentals, or air conditioning surcharges. FSH, §4.6.7.2. The agency argues that the Petitioner's excess heating expense is similar to these expenses in that it is an excess expense that an individual chooses to incur. As such, no deduction is allowed.

The governing federal regulations for the FS program are found at 20 CFR 273.9. The specific provisions relating to standard utility allowances are at 20 CFR 273.9(d)(6)(iii). Relevant provisions state as follows:

“With FNS approval, a State agency may develop the following standard utility allowances (standards) to be used in place of actual costs in determining a household’s excess shelter deduction: an individual standard for each type of utility expense; a standard utility allowance for all utilities that includes heating or cooling costs (HCSUA); and a limited utility allowance (LUA) that includes electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. The LUA must include expenses for at least two utilities. However, at its option, the State agency may include the excess heating and cooling costs of public housing residents in the LUA if it wishes to offer the lower standard to such households. . .”

20 CFR 273.9(d)(6)(iii)(A).

“. . . households in public housing units which have central utility meters and which charge households only for excess heating or cooling costs are not entitled to a standard that includes heating or cooling costs based only on the charge for excess usage unless the State agency mandates the use of standard utility allowances in accordance with paragraph (d)(6)(iii)(E) of this section.”

20 CFR 273.9(d)(6)(iii)(C).

“. . . If the State agency chooses to mandate use of standard utility allowances, it must provide a standard utility allowance that includes heating or cooling costs to residents of public housing units which have central utility meters and which charge the household only for excess heating or cooling costs . . .”

20 CFR 273.9(d)(6)(iii)(E).

A chart of every state’s standard utility allowances, effective October 1, 2014 on the USDA Food and Nutrition Service (FNS) website indicates that Wisconsin has an allowance for “space heating.” See chart at [http://www.fns.usda.gov/sites/default/files/SUA\\_Table.pdf](http://www.fns.usda.gov/sites/default/files/SUA_Table.pdf). Such allowance would seem to be in accord with the federal regulations stated above as a standard for excess heating costs. However, the Wisconsin FS handbook and regulations contain no mention of any standard for “space heating” or excess heating costs.

I conclude that the agency correctly determined that there is no allowance in the Wisconsin FS regulations for excess heating costs. The HSUA does not apply here because the excess charge is not one that the Petitioner is “required” to pay. The LUA and EUA do not apply because the excess charge is related to heating costs.

The Petitioner had no other dispute with regard to the agency’s determination other than the utility allowance. I have reviewed the agency’s budget calculations for the Petitioner’s FS allotment and find that the agency properly determined the Petitioner’s FS benefits effective December 1, 2014.

### **CONCLUSIONS OF LAW**

The agency properly determined that the Petitioner is not entitled to a utility allowance and therefore properly determined his FS benefits effective December 1, 2014.

**THEREFORE, it is**

**ORDERED**

That, if this Proposed Decision is adopted by Secretary of the Department of Health Services, the Petitioner's appeal is dismissed.

**NOTICE TO RECIPIENTS OF THIS DECISION:**

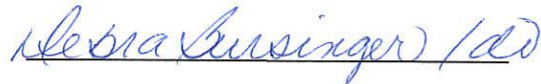
This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Children and Families for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Milwaukee,  
Wisconsin, this 17 day of April, 2015



Debra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals